163 US 709

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~547~~. 249

THE UNITED STATES, APPELLANT,

vs.

DANIEL O. FINCH.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 8, 1893.

(15348.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 547.

THE UNITED STATES, APPELLANT,

vs.

DANIEL O. FINCH.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

DANIEL O. FINCH
vs.
THE UNITED STATES. } No. 16715.

I.—*Petition filed January* 15, 1890.

The claimant in his petition respectfully shows to the court as follows:

I. That he is a citizen of the United States and a resident of the city of Des Moines in the State of Iowa.

II. That he was the properly commissioned, qualified, and acting district attorney of the United States for the southern judicial district of Iowa from September 30, 1885, to November 26, 1889; and that he fully discharged his duties as such district attorney during said period to the best of his ability.

III. That in and for the discharge of said duties he became entitled from the United States to certain fees and emoluments by reason
2 of the statutes which fix and declare the compensation which the district attorney shall receive for services rendered and duty performed.

IV. That within the calendar year 1885, to wit, from September 30 to December 31 of that year, he earned and became entitled to sixteen hundred and seventy-two dollars and forty-four cents ($1,672.44) from the United States, the same consisting of salary, $50.64; mileage, $161.80; per diem allowances for attendance in court, $205; and docket fees, $1,255. That he duly made out his accounts for said amounts and verified the same by oath; and that his accounts so made out and verified were passed upon and approved by the proper court of the United States, as provided in the act of Congress of February 22, 1875 (18 St., p. 333), and were presented to the accounting officers of the United States Treasury Department for settlement; and that the amounts charged in said accounts were allowed and paid with the exception of one hundred and forty-three dollars and seventy-one cents ($143.71), payment of which amount was refused by the accounting officers aforesaid on the ground that $1,528.73, the pro rata part of $6,000 for the period from September 30 to December 31, 1885, was as much of the $1,672.44 aforesaid as the claimant was legally entitled to receive.

V. The claimant shows that the accounting officers of the Treasury treated his mileage, $161.80, and his per diem allowance, $205, as matter proper to be included in, and computed as part of, the personal compensation of the district attorney, which is referred to and limited in Sec. 835, R. S.; and that they thereby failed and refused to certify for payment $143.71 of the $1,672.44 to which claimant was entitled, as shown and set forth in his accounts for the calendar year 1885.

VI. The claimant shows further that in the calendar year 1886 he earned and became entitled from the United States to five thousand and fifty-four dollars and fifty cents ($5,054.50); and that his accounts for said amount were properly made out and approved by the court, in the
3 manner hereinbefore mentioned for the year 1885, and presented to the accounting officers of the Treasury for settlement; and that said accounting officers, to wit, the First Comptroller of the Treasury, cer-

tified for payment only three thousand seven hundred and twenty-four dollars and sixty cents ($3,724.60), and that only $3,724.60 of the said $5,054.50 was paid; and that payment was refused of the remaining thirteen hundred and twenty-nine dollars and ninety cents ($1,329.90), the items and matters composing the same being more particularly referred to and described in the bill of particulars hereto attached.

VII. That the accounts of claimant for the calendar year 1888 were in like manner duly made out, approved, and presented to the accounting officers of the Treasury for settlement, and were duly allowed and paid except mileage to the amount of seven dollars and twenty cents ($7.20) for travel made between Des Moines and Keokuk in the said southern judicial district of Iowa which was disallowed by said accounting officers as excessive, they having estimated the distance between those two points at 162 miles, or 324 miles for a return trip, whereas the distance actually traveled and charged for by claimant in his accounts was 168 miles or 336 miles for a round trip, of which the claimant made six in the year 1888, the charges for which were reduced by the accounting officers and disallowed as aforesaid to the extent of $7.20.

VIII. That the accounts of claimant for the calendar year 1889 were likewise duly made out, approved, and presented to the accounting officers of the Treasury for settlement; and that they were duly allowed and paid except eight dollars and forty cents ($8.40), the same being mileage for eighty-four miles travel which was performed on seven trips between the aforementioned points—Des Moines and Keokuk; that the claimant actually traveled and charged 336 miles on each of said trips, and that the accounting officers declined to allow in excess of 324 miles for each trip.

4 IX. The claimant shows further that no action has been taken on his claim other than is set forth in this his petition; that he is the sole and exclusive owner of said claim; that no assignment or transfer of said claim, or of any part thereof or interest therein, has been made; and that he is justly entitled from the United States to the amount claimed in this his petition without any just credits or offsets.

Wherefore, the premises considered, the plaintiff demands from the defendant one thousand four hundred and eighty-nine dollars and twenty-one cents ($1,489.21), being $143.71 on account of the calendar year 1885; $1,329.90 on account of the calendar year 1886; $7.20 on account of the calendar year 1888; and $8.40 on account of the calendar year 1889. And he prays that the court from the facts will find that he is so entitled and give him judgment accordingly.

DANIEL O. FINCH.
J. ALTHEUS JOHNSON,
Attorney for Claimant.

STATE OF WASHINGTON,
County of King, ss:

Daniel O. Finch, on oath, says that he is the claimant named in the foregoing petition; that he is acquainted with the contents of the petition; and that the facts and matters therein stated are true to the best of his knowledge and belief.

Subscribed and sworn to before me this 3d day of January, 1890.

[SEAL.] S. H. PILE,
Notary Public, Washington.

5 *Bill of particulars for the calendar year* 1886.

The demands for this year consist of the items of difference which were made by the accounting officers of the Treasury, as shown in Treasury Statements Nos. 98490, 99189 and 101058, to wit, the following:

The docket fee of $20 in each of 121 cases tried before a jury, less $10 in each case, which was allowed by the accounting officers as for judgment when rendered without a jury	$1,210.00
The docket fees in cases against John Smith ($15) and John McClure ($5) and in two civil cases affecting postal matters ($15)	35.00
The two per cent commission upon money collected in suit under internal-revenue laws	38.50
The special counsel fee, taxed by the court at $30 each, in the case against T. H. Pervis and the case against H. O. Woodruff, less $15 in each case, which was allowed, the reduction having been made by the accounting officers on the recommendation of the Attorney-General	30.00
The per diem fees for attending two days before a U. S. commissioner on the hearing of applications of poor convicts for discharge from prison	10.00
The mileage for travel from Davenport to Keokuk, charged at 143 miles, allowed by accounting officers at 132, difference of eleven miles, at 10c. a mile	1.10
The mileage for travel, three times, between Des Moines and Council Bluffs, charged at 142 miles, allowed by accounting officers at 141, difference of three miles, at 10c. a mile	.30
The fee, not mentioned above, charged by claimant in his account for the first quarter of the year, but not allowed by the accounting officers	5.00
Total	1,329.90

6 II.—*Traverse filed January* 20, 1890.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and ha not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations and asks judgment accordingly.

JOHN B. COTTON,
Assistant Adjutant-General.

7 III.—*Findings of fact and conclusion of law filed by the court, April* 27, 1893.

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts as follows:

I.

The claimant was the duly commissioned and acting attorney of the United States for the southern district of Iowa from September 30, 1885, to November 26, 1889, and during said time rendered and performed service for said defendants as hereinafter shown. For said service he made out his accounts, verified the same by his oath, and the accounts so made and verified were passed upon and approved by the district court of the United States in the presence of the assistant district attorney of the

United States for said district. The said court found that the charges and services hereinafter mentioned appeared to be just and according to law.

II.

In the year 1885 the said claimant necessarily traveled in the discharge of his duties mileage amounting to the sum of $161.80, which was included and embraced in said account so approved as aforesaid; the accounting officer included the same in his emolument account for said year, and the emolument account was thus made in excess of the sum of $6,000 to the amount of $143.71. No payment has been made to said claimant for said mileage except the sum of $18.09, leaving said balance of $143.71.

8 III.

During said time and included in said accounts approved as aforesaid the claimant was allowed by the court the sum of $20 in 121 cases, each, as being jury trials; the accounting officer deducted and refused to allow and pay said claimant the sum of $10 in each case, making the sum of $1,210. In said cases the defendants had admitted their guilt in writing, and this writing, in the absence of the defendants at the trial, was produced in court and identified by one or more witnesses, and shown to the satisfaction of the court to be the voluntary act of the defendants, was then admitted as evidence to the jury, who thereupon rendered a verdict of guilty. The deduction amounted to the sum of $1,210, and for that no payment has been made to claimant. In all of said cases a plea of not guilty was entered, but no appearance by defendants.

In two convictions in a trial by jury the court allowed said claimant the sum of $30 in each case as a special allowance; of this amount of $60 the sum of $30 was disallowed by the Department, and no payment has been made said claimant for said sum so disallowed. This item was a part of the account approved by said court.

In said account so approved as aforesaid the said claimant had a charge of $38.50, being 2 per cent on the sum of $1,925.23, realized in a suit under the internal-revenue laws of the United States, which was disallowed and unpaid.

Included in said account so approved as aforesaid there are charges for the sum of $32.60 for mileage of the said claimant from his place of residence to the places of holding courts and before commissioners. That amount was disallowed by the Department and no payment has
9 been made to claimant; said amount is a disallowance of mileage during the time said claimant acted as district attorney. The amount of mileage was found and allowed by said district court of the United States.

Conclusion of law.

Upon the foregoing findings of fact the court determines as a conclusion of law that the claimant is entitled to recover the sum of one thousand four hundred and fifty-four ($1,454) upon the items set forth in the above findings. All other items of the claim are disallowed.

BY THE COURT.

10 IV.—*Final judgment.*

DANIEL O. FINCH
v.
THE UNITED STATES. } No. 16715.

At a Court of Claims held in the city of Washington on the 27th day of April, 1893, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge, and decree, that the claimant, Daniel O. Finch, do have and recover of, and from the United States, the sum of fourteen hundred and fifty-four dollars ($1,454).

BY THE COURT.

11 V.—*Application of defendants for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 27th day April, 1893, in favor of the claimant, the defendants, by their attorney-general, on the 7th day of June, A. D. 1893, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
Asst. Attorney-General.

Filed and allowed in open court, June 7, 1893.

WILLIAM A. RICHARDSON,
Chief Justice.

12 IN THE COURT OF CLAIMS.

DANIEL O. FINCH
vs.
THE UNITED STATES. } No. 16715.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the judgment of the court, of the application for, and allowance of appeal to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 12th day of June A. D. 1893.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Case No. 15348. Term No. 547, Court of Claims. The United States. Appellant *vs.* Daniel O. Finch. Filed July 8, 1893.

163-710

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~391.~~ 108

THE UNITED STATES, APPELLANT,

vs.

JOHN Q. LOVELL.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 14, 1892.

(15018.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 391.

THE UNITED STATES, APPELLANT,

vs.

JOHN Q. LOVELL.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

JOHN Q. LOVELL
vs.
THE UNITED STATES. } No. 16852.

I.—*Petition filed December* 5, 1890.

To the Honorable the Justices of the Court of Claims:

The petition of John Q. Lovell respectfully shows to your honors:

That he is a citizen of the United States and an officer of the Navy thereof, to wit, an assistant paymaster.

That on the 15th day of April, 1890, he reported on board the U. S. S. "Ajax" for duty, in obedience to orders to that effect from the Secretary of the Navy, and that he is still serving on board said vessel.

That the said vessel is moored in the James River in company with several other iron-clad vessels of the Navy.

That your petitioner has his quarters on board the said "Ajax," and is obliged to keep up his mess thereon and to wear his uniform, and is subject to all the military routine and discipline of a sea-going man-of-war, and that his duty is in every respect identical with that which he would be required to perform on any vessel of the United States Navy cruising in foreign ports.

That he has only been allowed the shore pay provided by section 1556 of the Revised Statutes for his grade, whereas he says that he should be paid the sea pay of his grade.

Wherefore he prays judgment in the sum of .

Your petitioner says that he is the sole owner of this claim, and that he is justly entitled to the amount herein claimed after allowance of just credits and offsets, and that he has at all times borne true allegiance to the United States, and that he has appointed John Paul Jones his attorney for the prosecution of this claim.

JOHN QUITMAN LOVELL,
Ass't Paymaster, U. S. Navy.

Subscribed and sworn to before me this 5th day of December, 1890.
[SEAL.] H. B. ZEVELY,
Notary Public.

2 II.—*Traverse filed December* 29, 1890.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney-General.

3 III.—*Findings of fact and conclusion of law.*

JOHN Q. LOVELL
v.
THE UNITED STATES.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

Claimant is an assistant paymaster in the United States Navy of more than five years' service as such.

II.

On the 15th day of April, 1890, he reported on board the United States steamship Ajax for duty, in obedience to orders from the Secretary of the Navy attaching him to the fleet of iron-clads moored in the James River, near Richmond, Va., and he has since been continuously on such duty.

III.

Said vessels are public vessels of the United States, employed by authority of law and are afloat in the channel of the James River, three miles from Richmond, Va., with no connection with the shore save by boats.

IV.

On the date specified the following order was issued by the Secretary of the Navy:

"AUGUST 3, 1877.

"Vessels in commission, lying in port, held in reserve for sea service, and reduced in complement, will be considered by the Department
4 as on special shore service, and the officers attached thereto on shore duty.

"Whenever the complement of such vessel is filled she will be considered as on sea service and her officers on sea duty until the completion of the cruise or the reduction of the complement, when she will again be considered as on special shore service and her officers on shore duty.

"R. W. THOMPSON,
"*Secretary of the Navy.*"

V.

Said iron-clad vessels are held in reserve for sea service, and reduced in complement of officers according to the said order of August 3, 1877, but are sea worthy and capable of immediate actual service if required. The engines are now uncoupled for the sake of convenience, but could quickly be coupled up, and after such repairs as are necessarily incident to vessels lying idle would be ready for active sea duty. They fly the flags of vessels regularly in commission for sea service, and all the naval discipline and restriction incident to a cruising vessel lying in a foreign or home port are rigidly observed, including the keeping of a log book.

VI.

Claimant's duties are identical with those of any assistant paymaster serving on a cruising vessel when in a foreign or home port. He pays the officers and men in exactly the same way; he issues provisions and small stores under the regulations; he is compelled at all times to wear the uniform of his grade proper to the occasion, and is therefore required to keep all the various uniforms in condition for immediate use, which would not be required of him if on shore duty or leave; he is assigned to quarters on the "Ajax;" he is required to pay his proportion to keep up his mess, and was required when he reported for duty to contribute to the fund for fitting up the mess with the necessary and proper table furniture, and also to provide his quarters with bedding, towels, linen, and other necessary articles, both of which are customary and usual when officers report for duty on a cruising vessel; he is required to obtain permission of the commanding officer when he leaves the vessel and to report his return, and is subject to punishment under the Navy regulations for any violation thereof; he is not allowed to have his family live on board with him.

VII.

Since the 15th day of April, 1890, claimant has been paid the shore pay of an assistant paymaster in his second five years, and has not been allowed a ration or commutation thereof.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court determines as a conclusion of law that the claimant is entitled to $514.52, being the difference between his sea pay and shore pay for the period set forth in the foregoing findings, for the reasons set forth in the opinion in Aulick's case.

BY THE COURT.

Filed February 8th, 1892.

The court filed no opinion in this case.

IV.—*Judgment of the court.*

JOHN Q. LOVELL
vs.
THE UNITED STATES. } 16852.

At a Court of Claims held in the city of Washington on the 8th day of February, A. D. 1892, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said John Q. Lovell, claimant, do have and recover of and from the United States the sum of five hundred and fourteen dollars and fifty-two cents ($514\frac{52}{100}$).

BY THE COURT.